

EXHIBIT 1



Deposition of:
Stefan Boedeker

March 1, 2021

In the Matter of:
Hawes, et al v. Macy's West Stores, Inc.

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1 BY MS. VAN ZANT:

2 Q. What product did the plaintiff buy?

3 MR. LEGANDO: Objection.

4 THE WITNESS: From what I recall, they were
5 linen and bedsheets, but I don't know the specific
6 products that were bought by the plaintiff or plaintiffs.

7 BY MS. VAN ZANT:

8 Q. And have you been retained to opine as to
9 damages related to the product purchased by the
10 plaintiff?

11 A. At this stage, I have been retained to propose
12 a methodology and explain how that methodology is able to
13 quantify class-wide economic losses. But I have not yet
14 conducted a study that would actually calculate the
15 damages.

16 So it is my understanding that this is a class
17 certification phase, and that at a later point, I may be
18 asked to perform expert opinions when it comes to what's
19 called the merit phase of the case, for lack of a better
20 term, but I have not been doing that work and have not
21 yet been retained for that work.

22 Q. On what product or products have you been asked
23 to opine?

24 A. What do you mean specifically by that, on what
25 products?

1 methodology for both of these analyses that I'm
2 proposing. I have seen some, some data spreadsheets that
3 show a lot of information for different products along
4 those dimensions that I testified about earlier.

5 But I have not sat down and issued designs of
6 the conjoint menu and to see which products to include.
7 Conjoint is flexible enough to do one product at a time
8 or to mix different products.

9 What I have done is looking at the spreadsheet
10 data that without really doing hedonic, but the data
11 requirements for a hedonic based on the spreadsheet data
12 that I've seen, is satisfied. So they're granular
13 enough. They have enough attributes of the products that
14 a hedonic can be applied.

15 But I have not done either one and have not
16 come, have not done any research in how I would actually
17 design either one of those two methodologies.

18 Q. So you don't, is it fair to say that you don't
19 know yet whether you would do a hedonic regression on
20 each individual product?

21 A. Depending on the, on the data situation, what
22 I've seen in my understanding with data samples, but if I
23 had broader data, then I could make that decision.

24 And a hedonic -- any statistical technique
25 requires sufficient data so, therefore, I would have to

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1 assess the data situation first, and then I would decide
2 to do one at a time or together. But either way, the
3 methodology, methodology itself would work.

4 Q. Uh-huh. On the conjoint analysis, do you know
5 if you could do that for all products together or whether
6 you would need to do the products individually?

7 A. I have not done that research, but it depends
8 on how many common attributes and characteristics they
9 are and by how much they differ.

10 And then in conjoint particularly, it's very
11 important to keep the study, so that to design the study
12 that is not going to be too long because then the
13 participants suffer from fatigue potentially.

14 And so, therefore, it is, it is likely if the
15 product variations are large, that I would break it up
16 into smaller studies. But I haven't done that analysis
17 yet.

18 Q. Do you have an opinion as to the appropriate
19 measure of damages in this case?

20 A. What do you mean by that?

21 Q. Well, does the phrase benefit of bargain
22 damages mean anything to you?

23 A. Yes, it does.

24 Q. Okay. Is benefit of bargain analysis an
25 appropriate measure of damages, in your opinion, in this

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1 Q. Have your opinions changed at all since
2 February 1st when you issued this report?

3 A. They have not.

4 Q. Are there any corrections you're aware of that
5 need to be made to your report?

6 A. Not at the moment. Maybe there is a typo that
7 I overlooked, but nothing of substance.

8 Q. In paragraph four, you mention retail
9 experience. Do you see that?

10 A. Retail experience in paragraph four.

11 MR. LEGANDO: I'll object to the form of the
12 question.

13 THE WITNESS: I see retail is listed between
14 healthcare and grocery. I found it.

15 BY MS. VAN ZANT:

16 Q. Have we talked about all of your retail
17 experience related to class actions and litigation?

18 MR. LEGANDO: Object to form.

19 THE WITNESS: We have not.

20 BY MS. VAN ZANT:

21 Q. Okay. What other work would you put in that
22 bucket, retail experience related to class actions?

23 A. Yeah. I've worked on, on really numerous
24 employment related class actions in the retail sector.
25 And have done consulting work in the retail sector,

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1 A. Right now that doesn't ring a bell.

2 Q. Have you read Ms. Hawes' deposition transcript?

3 A. I have not, otherwise I would have listed it.

4 Q. I believe you said you had never bought sheets
5 from Macy's; is that correct?

6 A. I, I cannot recall having bought sheets from
7 Macy's. That would be more my wife's department.

8 Q. And have you ever been in the bedding or sheet
9 department at a Macy's?

10 A. I don't recall. Very likely that I have not.

11 Q. But do you know how Macy's packages its sheets?

12 A. No. Because I have no recent experience, if
13 any experience, of having actually been to a bedding
14 department.

15 Q. Have you ever bought a set of sheets yourself?

16 A. I have not, no.

17 Q. And do you know what type of sheets you have in
18 your home?

19 A. I, yeah, I have a vague idea, so...

20 Q. Okay. What, what type of sheets do you have in
21 your home vaguely?

22 A. Linen sheets, for example. That's sheets that
23 I have. Other sheets of different materials than linen.
24 But I couldn't name all of them, including the guest
25 room, my kids' rooms, and my own room.

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1 time on the monitor is approximately 2:22 p.m. Eastern
2 Standard Time. And we're off the record.

3 (Recess.)

4 THE VIDEOGRAPHER: This is the beginning of
5 media number three in the deposition of Stefan Boedeker.
6 The time on the monitor is approximately 2:36 p.m.
7 Eastern Standard Time, and we're back on the record.

8 BY MS. VAN ZANT:

9 Q. Mr. Boedeker, have you ever seen the labeling
10 for any of the sheets at issue in this matter?

11 A. I have not looked at the labeling.

12 Q. Have you ever seen the packaging for any of the
13 sheets at issue in this matter?

14 A. I have not looked at the packaging for the
15 sheets.

16 Q. And do you know if the packaging or the
17 labeling differ among the different skus at issue in this
18 case?

19 A. I do not know that.

20 Q. I'm putting your report back on the screen.
21 There is a little funky thing here where we have
22 paragraph eight and then it's followed by paragraph 11.

23 Do you see that?

24 A. Move up a little bit. Oh, there we go. Yes,
25 it goes from eight to 11.

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1 Q. I'm so sorry. How is thread count related to
2 longevity?

3 A. Longevity was the last word that I missed.

4 Okay. I have not done any independent analysis
5 of doing that and, again, this is not something that is
6 necessary in proposing a methodology. Maybe later on in
7 the merits price actually doing data analysis, rather
8 than proposing a methodology, this may be something that
9 I may look into, but I haven't at the moment.

10 Q. Okay. In paragraph 13, you say that Latin
11 phrase, which means all other things the same, correct?

12 A. Yes.

13 Q. All other things the same, a higher thread
14 count is associated with a better quality and higher
15 price. You see that statement?

16 A. Yes, I do.

17 Q. Okay. And we talked about, have we talked
18 about all the basis for that statement?

19 A. Yes.

20 Q. Okay. And how do you know that all other
21 things are the same when you are thinking about this
22 association with a higher thread count?

23 MR. LEGANDO: Object to form.

24 THE WITNESS: The data that I looked at when
25 you look at, let's say, the blend between cotton and

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1 polyester, which could be whatever, 55, 45, 60, 40, then
2 some of the products at issue, and then the color, maybe
3 the weaving method, and compare that to keep that
4 constant, and then only look at the change in thread
5 count, that means keeping other things equal. And so
6 that's where this is a statement that is validated by
7 looking at the actual data.

8 BY MS. VAN ZANT:

9 Q. Okay. And, but you haven't actually validated
10 that statement, have you?

11 A. I did it with the pricing up with the thread
12 count, and there is a chart at the bottom of my report
13 somewhere.

14 Q. Right. And that, and that's later in your
15 report. We'll get to that.

16 So other than that chart, which is figure two,
17 that's the only validation you've done on, on your
18 statement there in paragraph 13?

19 A. Yes. And, again, the 12, 13, the claims
20 against the defendants are based on the amended complaint
21 and the case materials. And I have then verified that
22 higher thread count leads to higher prices.

23 Q. And --

24 A. Not leads, but goes together with higher
25 prices.

1 would come up with a conjoint design that includes the
2 relevant attribute.

3 And then I would empirically test, based on
4 consumer responses, 500, a thousand consumers, whatever
5 is necessary to get statistic reliability. And then I
6 would empirically calculate it.

7 So I would in a sense let the data do the
8 talking rather than assume something, and then what the
9 data indicate, will then be the results, which I would
10 report on.

11 Q. Are you going to analyze all the different skus
12 or are you going to group them or analyze them
13 altogether?

14 A. That is something that -- sorry. Okay. There
15 was a beep here.

16 Can you repeat that?

17 Q. Are you going to analyze all the different skus
18 or are you going to group them in some way, or are you
19 going to analyze them altogether?

20 A. That is an analysis that I have not yet done.
21 So I would have to do more research which, again, for the
22 conjoint, there is a specific design phase that I have to
23 go through. And that is sometimes I may even have to do
24 what I call an exploratory data survey that would
25 definitely be a pretest.

1 A. Also, I'm not done with my answer. I just have
2 one more cause or explanation.

3 Now, that would now be modeled along a curve.
4 So that curve is the best fitting curve for the data
5 points I have, and that basically enables me to have,
6 quote/unquote, I think we call in between values.

7 So I don't know if that's exactly what they
8 said, but that's how the statistical model will basically
9 do it along a curve, not just a discreet point.

10 Q. And I apologize for interrupting you earlier.
11 I didn't mean to.

12 In the conjoint analysis, you would include all
13 of the thread counts for every sku that's at issue in the
14 case?

15 A. I have not gone to that level to make a
16 decision about that, simply because I have not researched
17 and analyzed the data. But whatever the data require,
18 that's how I will design the conjoint analysis.

19 Q. And do you know if, do you know if there is
20 more than one sku, for example, with a 1200 thread count?

21 A. I have not broken down the skus based on the
22 characteristics and attributes of the product.

23 Q. And do you know if the degree of
24 misrepresentation is consistent across all the 1200 skus,
25 for example?

1 balance design, it is made sure, ensured that none of the
2 levels, none of the attributes, none of the combinations
3 is shown more often than any other.

4 And even pairs of combinations that show up on
5 the same menu are shown equally often. So that's being
6 accomplished by a randomization of all possible
7 permutations.

8 But each participant on each menu just sees one
9 level per attribute so, therefore, the number of
10 attributes is important or has an important impact on how
11 many participants I need and how many conjoint menus I
12 need.

13 But that can all be calculated once a design is
14 basically done. It's almost like a computer maximization
15 algorithm that finds the best randomization or the proper
16 randomization of all of these different permutations
17 under those constraints if nothing is shown more than
18 other things.

19 Q. Have you considered what attributes you would
20 need to test in the conjoint analysis?

21 A. I have not, not designed the conjoint menus
22 yet. But, again, I would look at the data and see what
23 are involved in attributes within the data. Then I would
24 probably do some additional research.

25 Sometimes I've been even done pilot studies or

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1 A. If it's not in the complaint, then it's based
2 on discussions with counsel. That's the data that was
3 given to me.

4 Q. Did they dictate that to you?

5 A. Dictate, probably not dictate in a sense of
6 verbatim. But it was part of a discussion we had if it's
7 not in the complaint, and then I put the sentence
8 together based on the discussion.

9 Q. Have you determined whether you'll be able to
10 design your study so that they only address sheets sold
11 in California?

12 A. The hedonic I would -- well, I can't restrict
13 the database on California sales. And the conjoint study
14 in defining the type of population, could be focusing on
15 people that bought sheets in California.

16 Q. Are you aware that the defendant here only sold
17 sheets in stores?

18 MR. LEGANDO: Object to form.

19 THE WITNESS: I mean, my understanding was that
20 these are store solds and not online sales. But that's
21 also something based on a discussion that I had.

22 BY MS. VAN ZANT:

23 Q. In paragraph 21 you cite the reference guide on
24 estimation of economic damages.

25 Do you see that?

1 Q. All right. But you're not, you're not changing
2 the supply as the demand changes?

3 A. The supply, first of all, the supply side in
4 the model is given by prices, product offerings that
5 occurred in the actual world. So that is basically the
6 supply side.

7 Now, following the reference manual, I'm now
8 changing the level of information that the consumers
9 have. They know I'm being, that the thread count, the
10 thread count mislabeling will not be disclosed to them,
11 but there is still a hundred thousand, that's in my
12 example, a hundred thousand people who bought that
13 product.

14 So for those 100,000 people, one now has to
15 find that the price that it would have sold in the
16 but-for-world, when the knowledge about the misstatement
17 is given to the consumers at the point of purchase.

18 That's not ignoring the supply side. That's
19 focusing on the point of the supply service that is
20 relevant for the damages calculation.

21 Q. Okay. Looking at figure one of your report, is
22 this for one product?

23 A. This is an example and it's for one product.
24 And it just shows what we're looking at at the to demand
25 curve and the point on the supply curve that is necessary

1 into the sheets would not be relevant to what you want to
2 do?

3 A. Only insofar as they reflect prices that the
4 consumers pay.

5 Q. So how would you control for that if the prices
6 may have increased over time due to the increases in the
7 raw materials?

8 A. Again, I haven't designed the study, but
9 typically prices are calibrated to prices that were
10 charged in the class period.

11 There is information in the general questions
12 in this conjoint study to basically find out when the
13 bedsheets were bought, and then prices will be matched
14 with the purchase date.

15 For the hedonic, the transaction that I have
16 have dates in them. So then the date then can be used to
17 test, I think I have seasonality as an example, but also
18 look at time trends in the data itself that would then
19 capture something like did raw materials get more
20 expensive or cheaper that could probably capture in that.

21 Q. Why would you use hedonic pricing regression
22 here?

23 MR. LEGANDO: Object to form.

24 THE WITNESS: What do you mean by here?
25

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1 data?

2 A. I don't know. I mean, it's possible that they
3 both will give reliable results, and then will in a sense
4 corroborate each other by giving similar results.

5 Q. Okay. We discussed earlier that these, the
6 sheets at issue in this case were sold in store. And
7 that means, doesn't it, that a potential purchaser could
8 test out the touch and feel of a sheet fabric in the
9 store; is that correct?

10 A. Say that again? I didn't hear the first part
11 of the question.

12 Q. Because the sheets are sold in store --

13 A. Okay.

14 Q. -- does that mean that a potential customer
15 could actually touch the sheets and determine how they
16 feel?

17 MR. LEGANDO: Objection.

18 THE WITNESS: I mean, it's possible, right,
19 that people in the store actually touched the product. I
20 haven't studied the impact of that. But, again, you
21 would always get the product that you ultimately buy
22 being put in some kind of a container, box, whatever it
23 is.

24 So I don't know if you're touching the one that
25 you're actually buying, or if you're touching a floor

1 sample. I haven't studied that or the impact of that.

2 BY MS. VAN ZANT:

3 Q. But touch and feel could be an important
4 consideration for customers, correct?

5 A. It is something that the customer can
6 subjectively place or put importance on. However, for
7 the damages calculation, I think I testified earlier the
8 reason why the customer buys something is secondary.

9 What is the primary issue is could they have
10 bought that product at a different price if the thread
11 count, the true thread count number had been disclosed at
12 the point of purchase.

13 Q. And your hedonic approach would not include the
14 touch and feel variable, correct?

15 A. Right now I have not thought about that. The
16 touch and feel variable is, at least in the data that I
17 have seen, is not something that is being captured at the
18 point of purchase.

19 It's also a variable that is hard to measure.
20 It's what would be the at level for a touch and feel
21 variable because everything feels and has a different
22 touch from consumer across the spectrum.

23 Q. What is multicollinearity?

24 A. That is something that pertains to hedonic
25 regression. And as I testified earlier, what I called

1 is?

2 A. Right now I don't see a cost column. Can you
3 move it a little bit to the right. The last thing I see
4 is NRF color. Oh, there we go.

5 Q. Okay.

6 A. The cost column or the owned retail column, for
7 this exercise I have not yet identified the meaning of
8 all of the variables. So right now I have not worked
9 with those two variables.

10 Q. And owned retail, do you know what that number
11 means?

12 A. Again, column I and J, I have not yet analyzed.

13 Q. And ticket retail?

14 A. Ticket retail, same thing. But the name is
15 just more explanatory. But I have not analyzed price
16 data for this part of my report.

17 Q. Okay. And what do you think ticket retail
18 means?

19 A. That's probably the retail price on the
20 sticker, not including any sales. But, again, since I've
21 not analyzed a full, what I would call a data dictionary,
22 I basically used, I don't know what ticket retail is. I
23 used this basically to look at information about
24 attributes.

25 Q. All right. And then we have, we have a class

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1 Q. So Exhibit 8 is notebook, and it pulled data
2 from Exhibit 7; is that correct?

3 A. Yeah. I didn't keep track of the numbering,
4 but it pulled data from one of the spreadsheets we looked
5 at earlier.

6 Q. It was Exhibit 7 that we were just on.

7 A. I take your word for it.

8 Q. Okay. Thank you. I appreciate that.

9 And so then this, is this what helped you to
10 generate the figures in your report?

11 A. Yeah. And just scrolling down, there would be
12 these lines we see actually called computer commands?

13 Q. Uh-huh.

14 A. And then at some point there, it basically goes
15 in and puts data in from that spreadsheet, and then
16 ultimately produces the graph that is Exhibit 2 in my
17 report.

18 Q. Okay. So we can see down here that, that you
19 used king sheets. That you pulled king sheets from
20 Exhibit 7 when you used this?

21 A. Yes, sorry. I didn't mean to interrupt you.

22 Q. No. That's okay.

23 A. Yeah. For comparison purposes in figure two, I
24 wanted to not mix the different sizes. So I focused on
25 one, and that's in XM, I picked the king sheets, and then

1 I would plot in figure two the ticket price for king
2 sheets against the thread count.

3 Q. Okay.

4 A. That's a lot of syntax here, but it all boils
5 down to pulling those data out of the spreadsheet, and
6 then turning them into the chart that is Exhibit 2 to my
7 report.

8 Q. Did you write this notebook or did someone else
9 write it?

10 A. This particular, I think it was done by
11 Dr. Groehn.

12 Q. Now, you have this, weave does not equal
13 sateen.

14 Do you see that?

15 A. Oh, yeah, highlighted. Okay. I see it right
16 now.

17 Q. Okay. What, so does that mean that in this
18 workbook you excluded sheets that were marked as sateen?

19 A. If you pull the chart, I did not improve that
20 because this was modeled, is my understanding not one of
21 those cotton polyester mixes.

22 Q. All right. So you selected king sheets. And
23 you, and you also selected, you wanted the ticket price
24 to be greater than zero if you were going to use it. And
25 then you excluded sateen sheets; is that right?

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1 A. That's what this syntax says, yes.

2 Q. Any other attributes addressed in this syntax?

3 A. In this syntax, because I wanted to plot ticket
4 prices against thread count, I did not put any other
5 variables in there. Indirectly the weave because for
6 weave I put in a restriction to exclude the sateen.

7 Q. And do you know if king sheets included or
8 excluded California king sheets?

9 A. I would have to look at the table, the
10 underlying spreadsheet, but I wanted to have it as
11 comparable as possible. So if there was a separate
12 category of California king sheets that was listed in
13 there, then if it was just the king sheets, if that was
14 the descriptor, then California king sheets wouldn't be
15 in there. But from the report itself, without looking at
16 the data, I couldn't tell.

17 Q. All right. Do you know what kind of weave the
18 sheets that Ms. Hawes purchased used?

19 A. I do not recall that.

20 Q. So in creating this notebook, did you account
21 for whether a sheet set included two pillowcases versus
22 four pillowcases?

23 A. I don't recall that. And I don't know how the,
24 if that's the end of the code, then I don't see it here.
25 So I don't know.

1 conjoint methodology that I propose here, is viewed as
2 revealing their overall preferences, by stating a
3 preference on one particular set choice menu.

4 So the way where the distinction comes in by
5 choosing one out of five or six options they see, they
6 can also pick the no purchase option, the participants
7 stating their preference for that limited set of options
8 that they saw and had one choice in.

9 Now, by giving them 10, 12, 15, whatever
10 choices that are necessary, they're ultimately revealing
11 preferences across all attributes.

12 And then in the next step, using this
13 hierarchical Bayesian estimation approach, it is possible
14 to calculate the, quantify these revealed preferences
15 with something that the literature refers to as path
16 work.

17 And then the path work can be calculated for
18 individual participants but also for the group of, group
19 of all participants representing the target population.

20 Q. Now, when you're testing the different examples
21 in the conjoint, those are theoretical combinations,
22 right, that you're testing?

23 A. You mean by the theoretical, what is the
24 theoretical combination?

25 Q. You described earlier that you put all the

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1 MR. LEGANDO: Objection. Form.

2 THE WITNESS: Somehow I didn't hear the end of
3 the question.

4 BY MS. VAN ZANT:

5 Q. Isn't it true that we're talking about in this
6 case in store sales, not Internet sales?

7 MR. LEGANDO: Same objection.

8 THE WITNESS: The sales at issue or in question
9 in this case were done in stores, but in this case the
10 panelists, the participants in the study will complete
11 the survey via the computer as an Internet based one.

12 But the description of the purchase situation
13 will tell them that they were in the store looking at
14 bedsheets. And I haven't done the path, but there will
15 be an introduction as to what purchase situation they are
16 in.

17 BY MS. VAN ZANT:

18 Q. Right. So, I mean, do you have any idea what
19 the average age of Macy's customers is?

20 A. I have not the slightest idea, no.

21 Q. And how would you, how would you make sure that
22 your population from the study mirrored the population
23 that was likely to buy sheets in a Macy's store?

24 A. Before the actual conjoint menus are shown,
25 there is a whole list of questions that identify the

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1 attributes that I had seen in the spreadsheets.

2 Q. Okay. So this is more just a rough outline of
3 what attributes you might think about; is that correct?

4 A. This, yeah, fitted and flat just show
5 illustratively speaking what attributes and levels of
6 attributes could look like.

7 MR. LEGANDO: Jennifer, we're running at 90
8 minutes here uninterrupted, so when you're approaching a
9 break, it would be appreciated.

10 MS. VAN ZANT: Sure. We can take a break. Ten
11 minutes.

12 MR. LEGANDO: Okay.

13 THE VIDEOGRAPHER: That's the end of the media
14 number three in the deposition of Stefan Boedeker.

15 The time on the monitor is approximately
16 6:08 p.m. and we're off the record.

17 (Recess.)

18 THE VIDEOGRAPHER: This is the beginning of
19 unit number four in the deposition of Stefan Boedeker.
20 The time on the monitor is approximately 6:17 p.m.
21 Eastern Standard Time.

22 And we're back on the record.

23 BY MS. VAN ZANT:

24 Q. Mr. Boedeker, would it matter to your study
25 design if the thread count were incorrectly represented

1 so, therefore, omitting an attribute would not
2 necessarily lead to a bias or I think you called it
3 distortion. In the estimates for the others to repeat
4 the sentence.

5 Q. What would you use as sources to determine what
6 attributes to include in a conjoint analysis in this
7 case?

8 A. I mean, for one, I have the spreadsheets that I
9 analyzed more for the hedonic to see if hedonic was
10 possible, and they gave me a number of attributes.

11 Now, I think I testified earlier that, that
12 even though there may be heterogeneous offerings in terms
13 of how these products are package, but in a sense
14 bedsheets are bedsheets. They don't have hundreds of
15 thousands of attributes.

16 So from then and the ones I have, I would
17 probably run some kind of a, what I call an exploratory
18 data survey to see how those rank on a scale to
19 consumers, and then also try to find out if there is any
20 additional ones.

21 Q. And how would you go out about finding out if
22 there were additional attributes that were important to
23 consumers?

24 A. That would be found out via a survey. And
25 there is different techniques of how to elicit that